

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

JACKSON BRYANT BAUGUS,

Defendant/Movant.

Cause No. CR 02-133-BLG-SPW
CV 21-008-BLG-SPW

ORDER DISMISSING
§ 2255 MOTION
AND DENYING CERTIFICATE
OF APPEALABILITY

On January 25, 2021, this Court received an Order from the Ninth Circuit Court of Appeals authorizing Defendant/Movant Baugus to file a second or successive motion under 28 U.S.C. § 2255. *See* Order (Doc. 334-2). The motion was duly filed, backdated to August 24, 2020, the date of Baugus's application to the Court of Appeals for leave to file in this Court. *See* Mot. § 2255 (Doc. 334).

On January 29, 2021, the Court found appointment of counsel was warranted and set a deadline for the filing of an amended motion. *See* Order (Doc. 336). Counsel appeared on February 3, 2021. *See* Notice (Doc. 337).

Following a series of extensions of time, counsel moved to withdraw on December 3, 2021. *See* Mot. to Withdraw (Doc. 372). To facilitate Baugus's viewing of sensitive materials, the Court reserved ruling on the motion to withdraw

and set a deadline for Baugus to file a document on his own behalf explaining why he believes he has a meritorious claim for relief. *See* Oder (Doc. 374).

Following another series of extensions of time, the Court noted that one order was served on Baugus at the wrong address. He was given another 60 days to file his document, with a deadline set for July 15, 2022. *See* Order (Doc. 382). Baugus did not respond.

A district court must “dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements” for relief specially applied to second or successive motions. *See* 28 U.S.C. § 2244(b)(4). Baugus must show that his “newly discovered evidence, if proven and viewed in light of the evidence as a whole, would be sufficient to show by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense.” 28 U.S.C. § 2255(h)(1); *see also id.* § 2244(b)(2)(B); *Brown v. Muniz*, 889 F.3d 661, 674 (9th Cir. 2018). This standard is far higher than a “reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different,” *see Turner v. United States*, ___ U.S. ___, 137 S. Ct. 1885, 1893 (2017) (quoting *Cone v. Bell*, 556 U.S. 449, 470 (2009)), the standard normally applied to claims under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972).

Baugus stated in his § 2255 motion that he could “show new counsel evidence that AUSA Seykora withheld impeachment material” concerning two prosecution witnesses, Michael Carroll and Clinton Horton. *See* Mot. § 2255 at 5–6 ¶¶ 10–12. Appointed counsel investigated the files and records of the United States Attorney’s Office. He did not find anything that he believed could potentially meet the applicable standard. *See* Br. in Supp. of Mot. to Withdraw (Doc. 373) at 2–3.

Baugus has had every opportunity to explain why he believes additional impeachment information would allow him to meet the high standard of § 2255(h)(1). He has not done so. His motion is dismissed.

A certificate of appealability is not warranted. Reasonable jurists could not find that Baugus has made a substantial showing that he was deprived of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Counsel’s motion to withdraw will be granted.


Accordingly, IT IS ORDERED:

1. Baugus’s motion under 28 U.S.C. § 2255 (Doc. 334) is DISMISSED pursuant to 28 U.S.C. § 2244(b)(4).
2. Counsel’s motion to withdraw (Doc. 372) is GRANTED.
3. A certificate of appealability is DENIED. The clerk shall immediately

process the appeal if Baugus files a Notice of Appeal.

4. The clerk shall ensure that all pending motions in this case and in CV 21-08-BLG-SPW are terminated and shall close the civil file by entering judgment in favor of the United States and against Baugus.

DATED this 15th day of September, 2022.



Susan P. Watters
United States District Court